COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Petition of Verizon New England, Inc. d/b/a Verizon Massachusetts for Arbitration of Interconnection Agreements with Competitive Local Exchange Carriers and Commercial Mobile Radio Service Providers in Massachusetts Pursuant to Section 252 of the Communications Act of 1934, as amended, and the Triennial Review Order	)	D.T.E. 04-33

ARBITRATORS' RULING ON
MOTION TO EXPAND THE PROCEDURAL SCHEDULE

I. INTRODUCTION

On March 16, 2005, a Motion to Expand the Procedural Schedule ("Motion to Expand") to incorporate pre-filed testimony, discovery, hearings and briefing on Supplemental Issue 3 of the Second Joint Stipulation of Disputed Issues was filed with the Department of Telecommunications and Energy ("Department") on behalf of certain members of the Competitive Carrier Coalition and the Competitive Carrier Group, and on behalf of MCI, Inc., Conversent Communications of Massachusetts, LLC, CTC Communications Corp., and AT&T Communications of New England, Inc. ("CLECs"). On March 21, 2005, Verizon filed its Opposition to the Motion to Expand ("Verizon Opposition"). For the reasons set forth below, the Arbitrators deny the Motion to Expand the Procedural Schedule.

II. POSITIONS OF THE PARTIES

A. CLECs

Under Supplemental Issue 3,[1] the CLECs seek a factual determination by the Department as to which Verizon wire centers are subject to the various unbundling criteria for

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[1] Supplemental Issue 3 is as follows:

> Should the DTE determine which central offices satisfy the various unbundling criteria for loops and transport? If so, which central offices satisfy those criteria?

loops and transport that were established by the FCC in its TRRO[2] (Motion to Expand at 1). The CLECs argue that a hearing and related evidentiary procedural due dates must be scheduled for the Department to hear factual matters associated with this issue (id.). Specifically, the CLECs maintain that the factual issues include, but are not limited to: (1) how Verizon counts business lines and fiber-based collocators; and (2) what data Verizon relies on in counting business lines and fiber-based collocators (id. at 6, 7-8). The CLECs contend that in the absence of a hearing on these issues, the Department would be unable to undertake a proper investigation of which wire centers satisfy the TRRO's various unbundling criteria for loops and transport (id. at 5). Furthermore, the CLECs contend that in the absence of Department-authorized discovery, the CLECs claim that they will likely be unable to obtain sufficient information to determine whether Verizon's list accurately implements the FCC's criteria (id. at 7).

Additionally, the CLECs argue that the TRRO states that the FCC's findings will be implemented as directed by section 252 of the Act, including meeting the requirements of Section 251, which, the CLECs claim, the Department would be unable to do without a hearing (Motion to Expand at 6). Moreover, the CLECs note that the TRRO requires CLECs to conduct a "reasonably diligent inquiry" that future loop and transport UNE orders are compliant with the TRRO, and the CLECs insist that they are attempting, in this arbitration, to do just that (id.). The CLECs note that some CLECs have submitted proposed contract language that would include lists of wire centers where loop and transport facilities are no longer available as Section 251(c)(3) UNEs, and therefore, the CLECs argue, the identification of wire centers is an open issue on which resolution is sought by those CLECs (id.). The CLECs contend that the Department is required to resolve each open issue in its disposition of this arbitration and exclusion of this issue from the arbitration would therefore be improper (id. at 6-7).

B. Verizon

Verizon opposes the Motion to Expand, arguing that the Department may, and should, resolve Supplemental Issue 3 without ever reaching the fact-intensive and time-consuming issue raised by the CLECs (Verizon Opposition at 1). To begin, Verizon argues that the CLECs ask the Department to ignore the first critical question in Supplemental Issue 3, whether the Department should determine which central offices satisfy the various unbundling criteria for loops and transport, and to go directly to the second question in Supplemental Issue 3, which specific central offices satisfy the unbundling criteria (id. at 2). Verizon argues that the

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[2] In the Matter of Unbundled Access to Network Elements and Review of the Section 251 Obligations of Incumbent Local Exchange Carriers, WC Docket No. 04-313 and CC Docket No. 01-338, Order on Remand, FCC 04-290 (rel. February 4, 2005) ("Triennial Review Remand Order" or "TRRO").

Department, however, cannot reach the second question unless it answers the first in the affirmative, a result which Verizon considers incorrect (id.).

Next, Verizon maintains that the TRRO, at ¶ 234, does not require the parties to amend their interconnection agreements on this issue (Verizon Opposition at 1). Rather, Verizon argues, the TRRO established a complete system for ordering high-capacity loops and transport that is intended to function without any contract amendment, rendering an amendment on this issue entirely voluntary (id. at 1-2). Verizon points to the TRRO, at footnote 660, to support its position. Verizon argues that in footnote 660, the FCC refers to the loop and transport ordering process as a "default" process that, according to Verizon, is intended to be implemented without amendment of the parties' contracts (id. at 4). Additionally, Verizon notes that the FCC's statement that the parties "remain free to negotiate alternative arrangements" means that the negotiation of alternative arrangements is optional (id., citing TRRO at n.660). Verizon contends that the CLECs, by asking the Department to conduct an inquiry and to certify which central offices satisfy the FCC criteria, seek to force Verizon to accept an alternative system for ordering UNE loops and transport and for resolving related disputes that is at odds with the FCC's default process (id. at 4).

Verizon further argues that because it must immediately process a CLEC-certified order for such a UNE, the existence of a dispute between Verizon and the requesting carrier over the availability of the requested UNE will not prevent the CLEC from obtaining that element as UNE rates in the first instance (Verizon Opposition at 3). Therefore, according to Verizon, CLECs suffer no harm in the absence of a contractual statement defining the wire centers that satisfy the various criteria for unbundling of loops and transport (id.).

Moreover, Verizon asserts that the default process anticipates that a requesting carrier will undertake an inquiry each time that it prepares to submit a UNE loop or transport order (Verizon Opposition at 4). Verizon claims that the CLECs, however, would have a single inquiry conducted by the Department in this arbitration that would freeze in place the Department's decision applying the FCC's unbundling criteria to every central office in the state by memorializing the decision in a list of offices to be incorporated into the agreements (id. at 4-5). Verizon presumes that the CLECs will then seek to prohibit any changes in that list outside the negotiation or arbitration process (id. at 5). Verizon insists that it is not obligated to agree to the CLECs' alternative arrangement, and that the CLECs have no right to force it upon Verizon in this arbitration (id.).

Finally, Verizon maintains that even if the Department were to consider the issue raised by the CLECS, the CLECs' proposal of multiple rounds of discovery and testimony followed by hearings is more complex and lengthy than the issue warrants (Verizon Opposition at 5). Verizon asserts that the FCC recognized in the TRRO that its impairment rules governing access to high-capacity loops and transport were based upon "objective and readily obtainable facts" (id. at 5, citing TRRO at ¶ 234). Verizon posits that the conversion of a simple factual

inquiry into a factually-intensive investigation underscores the true intent of the Motion and the likelihood that granting the Motion will result in delay in the progress of this case (id. at 6).

III. ANALYSIS AND FINDINGS

In the Second Joint Stipulation of Disputed Issues, Supplemental Issue 3 for arbitration is detailed as follows:

> Should the DTE determine which central offices satisfy the various unbundling criteria for loops and transport? If so, which central offices satisfy those criteria?

Before the Department reaches the second question in Supplemental Issue 3, the Department must answer in the affirmative the first question in Supplemental Issue 3. Clearly, there would be no need for the Department to determine which specific central offices satisfy the FCC's unbundling criteria for loops and transport if the Department ultimately concludes that it should not make that determination in the first place.

Similarly, two other issues presented for arbitration by the parties, namely, Supplemental Issues 1 and 2, also must be decided in the affirmative before the Department reaches the first question in Supplemental Issue 3. More specifically, Supplemental Issue 1 asks:

> Should the Agreement identify the central offices that satisfy the FCC's criteria for purposes of application of the FCC's loop unbundling rules?

Supplemental Issue 2 asks:

> Should the Agreement identify the central offices that satisfy the Tier 1, Tier 2 and Tier 3 criteria, respectively, for purposes of application of the FCC's dedicated transport unbundling rules?

Before the Department reaches any part of Supplemental Issue 3, the Department must decide both Supplemental Issues 1 and 2 in the affirmative, e.g. the Department must conclude that the interconnection agreements should identify the central offices that satisfy the FCC's unbundling criteria for high-capacity loops and transport. If, however, the Department's response to Supplemental Issues 1 and 2 is in the negative - that is, the Department concludes that the interconnection agreements should not identify which wire centers satisfy the FCC's unbundling criteria for loops and transport - then neither questions in Supplemental Issue 3 need to be reached.

Pursuant to 220 C.M.R. § 1.02(5), a party must demonstrate good cause to modify the procedural schedule. In this case, the CLECs failed to demonstrate that good cause exists to

expand the schedule. Specifically, the CLECs did not demonstrate the likelihood that the Department would rule affirmatively on Supplemental Issues 1 and 2, and the first question in Supplemental Issue 3. Accordingly, the CLECs have not demonstrated good cause to expand the schedule, and the Motion to Expand is hereby denied.

IV. RULING

For the reasons set forth above, the CLECs' Motion to Expand the Procedural Schedule is hereby denied. Accordingly, the procedural schedule issued on March 10, 2005 remains in effect.

Under the provisions of 220 C.M.R. § 1.06(6)(d)(3), any party may appeal this Ruling to the Commission by filing a written appeal with supporting documentation within five (5) days of this Ruling. Any appeal must include a copy of this Ruling.

Tina W. Chin,
Arbitrator

Jesse S. Reyes,
Arbitrator

Date: March 30, 2005